



U.S. Department of Justice

Office of the United States Trustee

Districts of Colorado, Utah, and Wyoming

999 18th Street, Suite 1551
Denver, Colorado 80202

303-312-7230
FAX 303-312-7259

**OPERATING GUIDELINES AND REPORTING REQUIREMENTS
OF THE UNITED STATES TRUSTEE**

**FOR CHAPTER 11 DEBTORS IN POSSESSION
AND CHAPTER 11 TRUSTEES**

I. INTRODUCTION

A. United States Trustee's Authority to Supervise Debtor in Possession

Pursuant to 28 U.S.C. Sec. 586, and 11 U.S.C. Sec. 704(8), the United States Trustee has established these **Operating Guidelines and Reporting Requirements** (the "requirements") for chapter 11 debtors in possession and chapter 11 trustees (the "debtor" or "debtors"). Under these requirements, debtors must establish and observe certain operating procedures and file certain financial reports with the Bankruptcy Court, the United States Trustee, and any committee appointed in the case by the United States Trustee. Debtors should carefully review these requirements with counsel upon receipt.

B. Compliance, Amendments or Modifications

Timely compliance with each of the requirements contained herein is mandatory. Failure to comply with any requirement may result in the filing of a motion to dismiss or convert the case or a motion to appoint a chapter 11 trustee or examiner.

Any request to amend or modify these requirements for a particular chapter 11 case must be made in writing. To be effective, approval by the United States Trustee must be in writing.

C. Duties of Debtor in Possession

With the filing of a chapter 11 petition, a debtor becomes a new entity called a debtor in possession. The debtor in possession has fiduciary and statutory responsibilities to preserve and maintain the estate and to operate its business as efficiently as possible in order to maximize ultimate payments on pre petition debts while keeping post petition debt current. (See 11 U.S.C. Sec. 1106 and Sec. 1107.)

II. OPERATING GUIDELINES

A. Bank Accounts/Money of the Estate

1. The debtor must immediately close pre petition bank accounts and open new “debtor in possession” bank accounts. All receipts must flow through the debtor in possession account(s). All disbursements should be by check.
2. The account name on the bank’s records must include the words “Debtor in possession.” Checks for the new accounts must be prenumbered by the printer, and must be **imprinted** with the words “Debtor in Possession” and the bankruptcy case number. Handwritten, typewritten, or hand-stamped versions are not acceptable. (See **Exhibit 1.**)
3. All money of the estate must be deposited or invested in accordance with 11 U.S.C. Sec. 345. Examples of deposits and investments that comply with Sec. 345(b) include, but may not be limited to, the following:
 - a. Deposits that are fully insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.
 - b. Investments in United States Treasury securities.
 - c. Deposits and investments with an entity that has posted a surety bond in favor of the United States, or pledged securities of the kind specified in 31 U.S.C. Sec. 9303, to secure the funds invested or on deposit.

B. Insurance

The debtor must maintain without interruption all insurance customarily carried in the debtor’s line of business or required by law or regulation. In most cases, the debtor will be required to carry liability, workers’ compensation, and property insurance, i.e., fire and extended coverage. The property insurance coverage must be for no less than the fair market value or replacement cost of the insured assets. The debtor must immediately notify the United States Trustee of any lapse, cancellation, modification, or renewal of insurance coverage.

C. Taxes

The debtor must remain current on all post petition federal, state, and local taxes and file all tax returns on a timely basis. If the debtor has payroll tax obligations, the debtor may be required to open a special tax account and report payroll tax deposits to the appropriate taxing authority.

D. Quarterly Fees

Pursuant to 28 U.S.C. Sec. 1930(a)(6), debtors are required to pay certain fees for each calendar quarter (or portion thereof) until the case is dismissed or converted or a final decree is entered and the case is closed. Failure to pay quarterly fees when due may result in the United States Trustee filing a motion to dismiss or convert the case. (See **Exhibit 2.**)

E. Legal Documents to Be Transmitted to the United States Trustee

Pursuant to Federal Rules of Bankruptcy Procedure 2002 and 9034, it is the responsibility of the debtor and the debtor's counsel to keep the United States Trustee apprised of all matters pertaining to the case at all times. This includes ensuring that the United States Trustee is served with copies of all papers (motions, applications, etc.) filed in the case.

F. Initial Debtor Interview

The United States Trustee will schedule an Initial Debtor Interview ("IDI") with the debtor and counsel shortly after the case is filed. The IDI will be conducted either at the debtor's place of business or at the offices of the United States Trustee. At the IDI, a bankruptcy analyst from the United States Trustee's office will seek to become familiar with the debtor's case as well as with the debtor's assets, liabilities, and accounting methods. Accordingly, the debtor's representative at the IDI should have personal knowledge and information regarding the debtor's pre petition and post petition operations, accounting records, tax returns and financial statements. The analyst will also discuss the role of the United States Trustee, explain the Operating Guidelines and Reporting Requirements, and respond to questions. The IDI will be held within 30 days after the petition is filed. Prior to the IDI, the debtor must ensure that the United States Trustee has a copy of the debtor's Statement of Financial Affairs and Schedules (unless the Court has granted an extension beyond the date of the IDI) and the debtor's Initial Financial Report. (See Section III, **Reporting Requirements**.)

G. Additional Legal Requirements

The debtor's attention is directed to the following selected provisions of the Bankruptcy Code:

1. Meeting of Creditors

A first meeting of creditors will generally be held 25 to 40 days after the petition is filed. The debtor or one of the debtor's officers, directors, or general partners must attend and respond, under oath, to questions from the United States Trustee and creditors, regarding the debtor's business and financial affairs, the cause of the bankruptcy, and the status of the debtor's reorganization efforts. (See 11 U.S.C. Sec. 341 and Sec. 343.)

2. Unsecured Creditors' Committee

- a. As soon as possible after the entry of an order for relief, the United States Trustee will invite the 20 largest unsecured creditors to an organizational meeting for the purpose of forming an unsecured creditors' committee. This organizational meeting may be held in conjunction with the first meeting of creditors described above, or it may be scheduled separately. The debtor and the debtor's counsel may be requested to attend this meeting. (**See** 11 U.S.C. Sec. 1102.)
- b. If a committee is appointed by the United States Trustee, the debtor must provide the committee with copies of all financial reports required by the United States Trustee.

3. Cash Collateral

The debtor may not use "cash collateral" unless the secured creditor agrees to such use, or such use is authorized by the court after notice and a hearing. (See 11 U.S.C. Sec. 363(c)(2).)

4. Obtaining Credit

The debtor may not obtain credit other than in the ordinary course of business without court authorization after notice and a hearing. (See 11 U.S.C. Sec. 364.)

5. Use, Sale or Lease of Property of the Estate

The debtor may not use, sell, or lease property of the estate when such use, sale, or lease is not in the ordinary course of business, except after notice and a hearing. (See 11 U.S.C. Sec. 363(b).)

6. Employment and Compensation of Professionals

The debtor may not employ or compensate professional persons, including the debtor's attorney, without court approval. (See 11 U.S.C. Secs. 326-331, 503 and 1107.)

7. Prohibition on Payment of Pre Petition Debts

The debtor must not pay any pre petition debts without court approval. (See 11 U.S.C. Sec. 549.)

III. REPORTING REQUIREMENTS

In addition to the reports described below, the United States Trustee may require the submission of any additional information that may be necessary to properly monitor the administration of the estate. **The original of each report is to be filed with the Clerk of the Court, and a copy bearing an original signature is to be transmitted to the Office of the United States Trustee.** Copies must also be provided to any committee appointed by the United States Trustee.

A. Initial Financial Report

1. The Initial Financial Report is due **fifteen days** after the petition is filed.
2. The Initial Financial Report consists of the following:
 - a. **Cover Sheet (Form 1).**
 - b. Latest fiscal year financial statements. The debtor must provide a complete set of financial statements for its most recent fiscal year. Publicly-held corporations must submit the most recent Form 10-K. Audited statements should be submitted if available. If audited statements are not available, the debtor should submit its last two federal income tax returns, along with unaudited statements.
 - c. **Balance sheet as of the end of the month immediately prior to filing.**
 - d. **Profit and loss statement for the month and year immediately prior to filing.**
 - e. **Proof of insurance coverage.** The debtor must provide a certificate(s) of insurance, signed by an authorized representative of the carrier or agent, with the United States Trustee named as a party to be notified in the event of cancellation. All documents provided as evidence of insurance must clearly indicate the policy expiration date, the types and amounts of coverage, the location(s) covered, the deductible, the named insured, the insurer, and the name, address, and telephone number of the local agent.
 - f. **Projections.** The debtor must submit a projected statement of revenue, expenses, and cash flow for the first 120 days of post petition operations. Significant assumptions used in the projections must be described. The statement must provide sufficient detail to support a review of reasonableness when compared with other financial statements provided with the report.
 - g. **Information concerning debtor in possession account(s).** The debtor must submit a sample voided check for each debtor in possession account. If a sample check is not yet available, the debtor must, in the interim, provide the account number and name and address of financial institution where the account is located. ***Please note that this information should be provided only in the copy of the report submitted to the United States Trustee; it should not be included in the copy of the report that is filed with the Clerk of the Court.***

B. Monthly Financial Reports

1. A Monthly Financial Report must be submitted for each month (or portion thereof) after the petition is filed until a plan is confirmed or the case is dismissed or converted. The Monthly Financial Report submitted for the month in which an order confirming the plan is entered should cover the entire month.
2. The Monthly Financial Report is due **fifteen days** after the end of the month covered by the report.
3. The Monthly Financial Report consists of the following:
 - a. **Cover Sheet (Form 2-A).**
 - b. **Cash Receipts and Disbursements Statements (Form 2-B).**
 - c. **Supporting Schedules (Form 2-C):**
 - 1) Post Petition Taxes Payable Schedule
 - 2) Insurance Schedule
 - 3) Accounts Receivable and Post Petition Payable Aging
 - 4) Schedule of Payments to Attorneys and Other Professionals
 - 5) Schedule of Payments to Principals/Executives
 - d. **Balance Sheet (Form 2-D).**
 - e. **Profit and Loss Statement (Form 2-E).**
 - f. **Quarterly Fee Summary (Form 2-F).**
 - g. **Narrative (Form 2-G).**
 - h. **Complete copies of bank statements for all accounts.**
 - i. **Bank statement reconciliations for all accounts.**
4. Each Monthly Financial Report must be prepared on the attached forms. Computerized versions of these forms are available from the United States Trustee. System-generated reports may be attached as exhibits if prior approval from the United States Trustee has been obtained.
5. Each Monthly Financial Report must be prepared on 8-1/2 by 11 inch, standard quality white paper, in order to conform to court filing requirements. (See Local Rules and Standing Orders for other restrictions and requirements.)
6. The Monthly Financial Report must be legible. If possible, the report should be typed. No entries should be left blank; if an item does not apply, enter "0" or "N/A".
7. Reports prepared on the accrual basis of accounting are **strongly** recommended. The debtor may not switch from accrual to cash basis reports without the prior written approval of the United States Trustee.

8. Regardless of who prepared the Monthly Financial Report, the report must be signed, under penalty of perjury, by the debtor(s), a corporate officer, a general partner, or the chapter 11 trustee, as appropriate.

C. Reports on Cases Converted to Chapter 7

Pursuant to Fed.R.Bankr.P. 1019(5), the debtor must: 1) within fifteen days after entry of an order converting the case to a case under chapter 7, file a schedule of unpaid debts incurred after commencement of the chapter 11 case, such list to include the name and address of each post petition creditor; and 2) within 30 days after entry of the order of conversion, file with the court and transmit to the United States Trustee a final report and account.

D. Post Confirmation Reporting Requirements

Pursuant to 11 U.S.C. Sec. 1106(a)(7), the debtor must file a Post Confirmation Quarterly Report **(Form 3)** for each calendar quarter, or portion thereof, subsequent to the last Monthly Financial Report until the court has entered a final decree closing the case. The Post Confirmation Quarterly Report is due **thirty days** after the end of each quarter, except for the **final** Post-Confirmation Quarterly Report, which should be filed at the same time as the Chapter 11 Final Report and Motion for Final Decree. See Local Bankruptcy Rule 215.

DEBTOR IN POSSESSION ACCOUNTS

This is an example of a correctly styled check for a debtor in possession bank account. Please use it as a guide in setting up your account and ordering checks.

The words "Debtor in Possession" and the bankruptcy case number must be ***imprinted on all*** checks issued by a debtor. Handwritten, typewritten and hand-stamped versions are ***not*** acceptable. The use of the abbreviation "DIP" for "debtor in possession" is ***not*** acceptable. In addition, the checks must be prenumbered by the printer.

John Doe Holding, Inc., dba USA GOODS 1001
Debtor in Possession
Case No. 88C-20000
1400 Every Street 11-7/1000
Anytown, CO 80000
(303) 111-1111

PAY
TO THE
ORDER OF _____, \$()
DOLLARS
Solvent National Bank
1 Finance Street
Metropolis, CO 80001

FOR _____
|:3 25079486|:57670 008641811 - 0801

CHAPTER 11 QUARTERLY FEES

The chapter 11 debtor in possession or chapter 11 trustee is responsible for paying this fee. The amount of the fee depends on disbursements made during the calendar quarter.

Fee payments are due no later than the last day of the month following the quarterly reporting period. In order for a plan to be confirmed in the case, the plan must provide that payment of quarterly fees will continue until a final decree is entered and the case is closed.

FEE SCHEDULE

<u>TOTAL QUARTERLY DISBURSEMENTS</u>		<u>QUARTERLY FEE</u>
\$	0 to	\$ 250
15,000	to	500
75,000	to	750
150,000	to	1,250
225,000	to	1,500
300,000	to	3,750
1,000,000	to	5,000
2,000,000	to	7,500
3,000,000	to	8,000
5,000,000	to	10,000
	or more	

Failure to pay the quarterly fee is cause for conversion or dismissal of the chapter 11 case. [11 U.S.C. Sec. 1112(b)(10)].

Checks are to be made payable to The United States Trustee and mailed to the address set forth below. Fees are **not** to be mailed or delivered to the local Office of the United States Trustee. If any check is returned "unpaid" for any reason, all subsequent payments must be made by way of cashier's check, certified check, or money order.

To ensure proper credit, it is imperative that the debtor in possession and chapter 11 trustee write the case number on each check and remit the payment with the coupon provided with the quarterly billing. A separate check and coupon is required for each quarterly payment even if more than one quarterly fee is paid at the same time.

Send all payments to: UNITED STATES TRUSTEE PAYMENT CENTER
P. O. Box 198246
Atlanta, GA 30384